

Article 4. Variances

3.400 Application Required

- A. Every application for a variance, other than those addressed in subsection B. below, shall be filed with the Board of Adjustment, in accordance with the Board of Adjustment's established rules of procedure. An application may be filed by the owner of property or an authorized agent, or by the Planning and Development Department upon recommendation of the Zoning Commission, Plan Commission, Board of Adjustment or City Council.
- B. The Director of Planning and Development, or a designee, may approve requests to vary from the standards of this Zoning Ordinance provided the requests are the lesser of ten percent (10%) of the applicable specification or one linear foot/one square foot.

3.401 Fee Required

Every application shall be accompanied by the appropriate filing fee as provided in the Schedule of Fees and Charges contained in Chapter 25 of the City Code. No fee shall be charged for variance applications filed upon recommendation of the Zoning Commission, Plan Commission, Board of Adjustment or City Council.

3.402 Notice

Written notice of all public hearings before the Board of Adjustment on proposed variances shall be sent to owners of real property lying within 300 feet of the subject property. Such notice shall be given not less than ten days before the date set for hearing to all such owners who have rendered their said property for City taxes, as the ownership appears on the last approved City Tax Roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the United States Mail. When property lying within 300 feet of the subject property is located in territory which was annexed to the City after the final date for making the renditions which are included on the last approved City Tax Roll, at least 15 days notice of the time and place of the public hearing shall be published in an official newspaper or a paper of general circulation in the City. Refer to '*District Regulations, Chapter 4.305 Uses*' B.1 for additional notice requirements for halfway houses.

3.403 Board of Adjustment Action

In taking action on an application for a variance, the Board of Adjustment shall grant the application only when the Board determines that:

1. Literal enforcement of the regulations in this Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property; and
2. The situation causing the hardship or difficulty is unique to the affected property; and
3. The situation or hardship is not self-imposed; and
4. The relief sought will not injure the existing or permitted use of adjacent conforming property; and
5. The granting of a variance will be in harmony with the spirit and purposes of this Zoning Ordinance.



Picture 3.3 . ([Popup full image](#))

3.404 Expiration of Variance

A variance shall expire and have no further effect 180 days after the Board of Adjustment approval, or at such alternative time as specified in the approval, unless:

1. A building permit has been issued; or
2. A Certificate of Occupancy has been issued; or
3. The Planning and Development Director grants a one-time extension for a maximum of 180 days upon written request of the applicant prior to the original expiration date.

Any variance granted by the Board of Adjustment shall terminate automatically when the period of use specified in the Board of Adjustment's order has expired, or when the use ceases to be in full compliance with any condition imposed by the Board of Adjustment.

3.405 Appeal

Any person aggrieved by any decision of the Board of Adjustment may present to a court of record a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. The petition shall be presented to the court within ten days after the filing of the decision in the office of the Board of Adjustment in accordance with the procedures in Section 211.011, Texas Local Government Code, as amended.

3.406 Limitation on Reapplication

- A. When a proposal is denied by the Board of Adjustment or when the applicant has withdrawn a proposal after the giving of public notice, no new applications of like nature shall be accepted by the city or scheduled for a hearing by the Board of Adjustment within a period of 24 months of the date of denial or withdrawal unless the proposal is denied without prejudice; provided, however, on receipt of written request by the original applicant describing substantially changed conditions in the community since prior consideration of the proposal so as to justify an earlier review of this matter, the mandatory delay period may be waived and a new application accepted. When a decision of the Board of Adjustment is appealed to a district or county court, no new applications

of like nature will be accepted by the city or scheduled for a hearing until the court renders its final decision.

- B. When the district or county court affirms the decision of the Board of Adjustment to deny a variance proposal, no new applications of like nature shall be accepted by the city or scheduled for a hearing unless there is substantial change in conditions in the community since the decision of the Board of Adjustment so as to justify accepting a new application.

(Ord. No. 13896, Eff. 10/12/99; Ord. No. 17522, 04/24/07; Ord. No. 17243, 10/17/06; 21816, 08/12/15)